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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,701	03/29/2005	David R. Wardwell	20020019PCT-US	2061

7590 04/21/2008  
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EXAMINER
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CHANKONG, DOHM

ART UNIT	PAPER NUMBER
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2152

MAIL DATE	DELIVERY MODE
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04/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/529,701	<b>Applicant(s)</b> WARDWELL, DAVID R.	
	<b>Examiner</b> DOHM CHANKONG	<b>Art Unit</b> 2152	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-12.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Bunjob Jaroenchonwanit/  
Supervisory Patent Examiner, Art Unit 2152

/D. C./  
Examiner, Art Unit 2152

Continuation of 11. does NOT place the application in condition for allowance because: Applicant maintains the argument that Mann does not disclose the limitation of "receiving a plurality of sets of data packets from a plurality of non-synchronous compute nodes physically separated from each other, wherein each of said sets of data packets is provided by one of said non-synchronous compute nodes." Applicant argues that Mann's teaching of "only one" host system means that Mann could not teach receiving a plurality of sets of data packets "from a plurality of non-synchronous compute nodes." As noted by Applicant, Mann's host system receives the packets that are sent from the different communication sessions. The host system is therefore not being analogized to Applicant's claimed nodes but to the apparatus that receives the data packets.

Applicant further argues that since Mann teaches that packets are received from the front end of the packet queue and then transferred to the host system, then Mann does not teach receiving a plurality of sets of data packets from a plurality of compute nodes. This argument is not persuasive. Mann clearly discloses the well known feature that "[w]hen a plurality of network nodes simultaneously access a common network resource, packets from a communication session may be shuffled with packets from hundreds of other different sessions" [column 1, lines 45-48]. One of ordinary skill in the art would clearly recognize that a host system can establish different sessions with a plurality of different nodes and therefore receive different sets of packets from each of these sessions.

Applicant also argues that Mann's host system would not have suggested to one of ordinary skill in the art to have implemented nodes physically separate from each other. It is unclear why Applicant's argument fixates on the host system. Mann's host system, as described above, reads on the apparatus of Applicant's claims (for example, claim 5). The host system is not suggested to read on the plurality of compute nodes that send the data packets.

Additionally, Applicant asserts that Mann does not disclose the limitation of "inserting said data packets into a software container according to user predetermined rules for determining a logical order for said data packets." Applicant maintains that Mann's teaching of a FIFO contradicts this limitation. However, implementing a packet queue as a FIFO so that packets are inserted in a first in and first out manner is in fact a predetermined rule established by the user. Additionally, Mann discloses classifying the packets and reordering them based on different classification rules established by the user [column 5, lines 19-28].

Based on the foregoing remarks, Applicant's arguments are not found persuasive. Applicant's request for reconsideration has been considered but they are not persuasive to overcome the Mann reference. The rejection set forth in the previous Office action is therefore maintained.